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STATE OF NEVADA

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff,

WALKER RIVER PAIUTE TRIBE,

Plaintiff-Intervenor,

vs.

WALKER RIVER IRRIGATION DISTRICT,
a corporation, et al.,

Defendants.

WALKER RIVER IRRIGATION DISTRICT,

Petitioner,

STATE OF NEVADA,

Petitioner -Intervenor

vs.

CALIFORNIA STATE WATER RESOURCES
CONTROL BOARD, W. DON MAUGHAN,
EDWIN H. FINSTER, ELISEO M.
SAMANIEGO, JOHN CAFFREY and
DARLENE E. RUIZ, Members of the
California State Water Resources
Control Board,

Respondents,

CALIFORNIA TROUT, INC.,

Respondent-Intervenor.

IN EQUITY NO. C-125-B-ECR

STATE OF NEVADA'S
PRELIMINARY THRESHOLD
MOTIONS RE DISMISSAL OF
COUNTERCLAIMS, ADDITIONAL
PARTIES AND
SERVICE OF PROCESS

6

1 The State of Nevada, by and through the undersigned counsel,
2 moves this Court for an Order dismissing without prejudice the
3 counterclaim of the Walker River Paiute Tribe ("Tribe") filed on
4 March 17, 1992, and any counterclaim filed by the United States
5 of America pursuant to its motion dated July 22, 1992.

6 Alternatively, the State of Nevada moves this Court for an
7 Order, (1) requiring the joinder of additional parties in order
8 to have before the Court all claimants to the waters of the
9 Walker River or its tributaries and (2) providing for service of
10 process on the joined parties in compliance with the provisions
11 of Rule 4 of the Federal Rules of Civil Procedure.

12 The motion is made pursuant to Rules 13 and 15 of the
13 Federal Rules of Civil Procedure and is based upon the Walker
14 River Irrigation District's points and authorities supporting its
15 motion to dismiss the counterclaims, adopted and incorporated by
16 reference.

17 The alternative motion is made pursuant to Rules 19 and 4 of
18 the Federal Rules of Civil Procedure and is based upon all the
19 pleadings and papers previously filed in this matter, including
20 those on file in Equity No. C-125 and subfiles C-125A and C-125B,
21 and the following points and authorities.

22 POINTS AND AUTHORITIES

23 I. The Counterclaims Should Be Dismissed Without Prejudice.

24 On March 17, 1992, the Walker River Paiute Tribe ("Tribe")
25 filed a pleading denoted as a counterclaim. This Court, in
26 orders dated May 18, 1992, and June 17, 1992, gave the United
27 States of America ("United States") until July 24, 1992, in which
28 to file a position statement regarding the Tribe's counterclaim.

1 The United States filed a Motion for Leave to File Counterclaim
2 and its proposed Counterclaim on or about July 22, 1992. The
3 proposed counterclaim is substantively the same as the Tribe's
4 counterclaim. Collectively, the Tribe's counterclaim and the
5 proposed counterclaim are referred to as "Counterclaims."

6 On August 3, 1992, the Walker River Irrigation District
7 ("Irrigation District") filed a motion requesting that this Court
8 dismiss the Counterclaims for two reasons. First, in the context
9 of the Irrigation District's First Amended Petition, the
10 Counterclaims are not against an opposing party. Secondly, the
11 Counterclaims are actually amendments and/or supplements to the
12 original complaint, dated July 3, 1924, which have been filed
13 without court approval under Rule 15 of the Federal Rules of
14 Civil Procedure.

15 The State of Nevada adopts and incorporates the arguments
16 contained in the Irrigation District's points and authorities
17 supporting its motion to dismiss. The State of Nevada maintains
18 that either reason stated by the Irrigation District provides a
19 basis for dismissing the Counterclaims without prejudice.

20 II. All Claimants To The Waters Of The Walker River Or Its
21 Tributaries Must Be Joined As Additional Parties.

22 The Counterclaims seek recognition of two new water rights
23 from the Walker River, one being the right to store water in
24 Weber Reservoir for use on lands of the Walker River Reservation
25 ("Reservation") and the other being a federal reserved water
26 right to use water on lands allegedly restored to the Reservation
27 on September 25, 1936. In the Counterclaims, the Tribe and the
28 United States name as counterdefendants all water users on the

1 Walker River and its tributaries as set forth in the Final
2 Decree.

3 However, due to the time that has passed since the United
4 States began the Walker River adjudication, many if not all of
5 the named defendants in the Final Decree are dead and/or their
6 decreed water rights have been transferred. As an example, the
7 Nevada Department of Wildlife, although not named as a defendant
8 in the Final Decree, holds decreed water rights. Accordingly,
9 the successors in interest to the decreed water rights are not
10 parties before the Court and, as will be discussed, must be
11 joined under Rule 19 of the Federal Rules of Civil Procedure.

12 In addition, all other claimants to the waters of the Walker
13 River or its tributaries, not included in the Final Decree but
14 authorized by either the California State Water Resources Control
15 Board or the Nevada State Engineer to appropriate such waters,
16 should likewise be joined. One such entity is the Nevada
17 Department of Wildlife which holds permitted water rights to the
18 waters of the Walker River. As discussed below, Rule 19 requires
19 the joinder of all claimants to the waters of the Walker River or
20 its tributaries.

21 Rule 13(h) authorizes the joinder of parties to a
22 counterclaim in accordance with the provisions of Rules 19.
23 Three separate bases exist, pursuant to Rule 19, requiring that
24 nonparty claimants to the waters of the Walker River be joined as
25 counterdefendants in this case.

26 Rule 19(a)(1) provides that a person must be joined as a
27 party to an action if "in the person's absence complete relief
28 cannot be accorded among those already parties." Fed. R. Civ. P.

1 19(a)(1). The first provision of Rule 19(a) requires that "all
 2 persons who have a substantial interest in the litigation must be
 3 made parties whenever necessary to assure that the relief which
 4 may be awarded will completely and effectively adjudicate the
 5 dispute." Trombino v. Transit Casualty Co., 110 F.R.D. 139, 143
 6 (D.R.I. 1986).

7 In seeking the recognition of additional water rights from
 8 the Walker River in the Counterclaims, the Tribe and the United
 9 States attempt to amend or modify the Final Decree. Assuming
 10 arguendo that they are successful, such an amendment or
 11 modification will not completely and effectively adjudicate the
 12 dispute if claimants to these same waters are not joined in the
 13 action. Therefore, joinder of all claimants to the waters of the
 14 Walker River is required under Rule 19(a)(1).

15 Rule 19(a)(2) provides that a person should be joined as a
 16 party in an action if "the person claims an interest relating to
 17 the subject of the action and is so situated that the disposition
 18 of the action in the person's absence may (i) as a practical
 19 matter impair or impede the person's ability to protect that
 20 interest...." Fed. R. Civ. P. 19(a)(2)(i). Even if a nonparty
 21 is not bound by a judgment, the Court must consider the practical
 22 effect of the judgment on the absentee's interest. Provident
 23 Tradesmens Bank & Trust Co. v. Patterson, 390 U.S. 102, 110
 24 (1968). Moreover, the Court need only find possible harm, not
 25 certain harm, to the absentee's interest. Aguilar v. Los Angeles
 26 County, 751 F.2d 1089, 1094 (9th Cir.) cert. denied, 471 U.S.
 27 1125 (1985).

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1 In this case, nonparty claimants, as well as the Tribe and
2 the United States, have a claim to the waters of the Walker River
3 or its tributaries, the subject of the Counterclaims. Also, any
4 modification of the Final Decree, reflecting the request for
5 additional water rights in the Counterclaims, may affect the
6 claims of other water users on the Walker River. Consequently,
7 Rule 19(a)(2)(i) requires joinder of the claimants to the waters
8 of the Walker River or its tributaries.

9 Rule 19(a)(2) provides that a person who claims an interest
10 in the subject of the action should be joined if the person's
11 absence may "leave any of the persons already parties subject to
12 a substantial risk of incurring double, multiple, or otherwise
13 inconsistent obligations by reason of the claimed interest."
14 Fed. R. Civ. P. 19(a)(2)(ii). This third provision of Rule 19(a)
15 focusses on the prejudice to those already parties due to the
16 absence of a person.

17 As previously stated, nonparty claimants to the waters of
18 the Walker River will not be bound by the Court's judgment
19 regarding the new water rights claims of the Tribe and the United
20 States. The absence of the nonparty claimants places the State
21 of Nevada at substantial risk that its decreed water rights
22 and/or permitted water rights will be the subject of future
23 litigation. Thus, Rule 19(a)(2)(ii) requires the joinder of the
24 nonparty claimants.

25 III. Service Of Process On The Joined Parties Must Comply With
26 The Requirements Of Rule 4.

27 Rule 4 of the Federal Rules of Civil Procedure provides the
28 process and service requirements for original complaints,

1 requiring that a summons and complaint be served upon all
2 defendants in an original action. Rule 19(a) requires that the
3 courts treat counterclaims against additional parties as original
4 actions for the purposes of service. When parties are joined
5 pursuant to Rule 19, the service of process on the joined parties
6 must comply with the requirements of Rule 4. See Lamar v.
7 American Basketball Ass'n, 468 F. Supp. 1198, 1200 (S.D.N.Y.
8 1979) (order permitting joinder of additional defendant under
9 Rule 20 did not obviate compliance with requirements respecting
10 service of process). Therefore, the Tribe must comply with Rule
11 4 in serving its counterclaim on the joined parties.

12 IV. Conclusion

13 The Counterclaims must be dismissed without prejudice. In
14 the context of the Irrigation District's First Amended Petition,
15 the Counterclaims are not against an opposing party. Also, the
16 Counterclaims are actually amendments and/or supplements to the
17 original complaint, dated July 3, 1924, which have been filed
18 without court approval under Rule 15 of the Federal Rules of
19 Civil Procedure.

20 Alternatively, all claimants to the waters of the Walker
21 River or its tributaries must be joined as parties pursuant to

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1 Rule 19. Additionally, the joined parties must be served with
2 process according to the requirements of Rule 4.

3 DATED this 3rd day of August, 1992.

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CERTIFICATE OF MAILING

Pursuant to FRCP 5(b), I certify that I am an employee of the Office of the State Engineer, Division of Water Resources, and that on this date I deposited for mailing at Carson City, Nevada, a true copy of the foregoing document addressed to:

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